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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

OCT 22 1999

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Promotion of Competitive Networks	)	WT Docket No. 99-217 ✓
in Local Telecommunications Markets	)	
	)	
Wireless Communications Association	)	
International, Inc. Petition for Rulemaking	)	
to Amend Section 1.4000 of the Commission's	)	
Rules to Preempt Restrictions on Subscriber	)	
Premises Reception or Transmission Antennas	)	
Designed to Provide Fixed Wireless Services	)	
	)	
Cellular Telecommunications Industry	)	
Association Petition for Rule Making and	)	
Amendment of the Commission's Rules to	)	
Preempt State and Local Imposition of	)	
Discriminatory And/Or Excessive Taxes	)	
	)	
Implementation of the Local Competition	)	CC Docket No. 96-98
Provisions in the Telecommunications Act of 1996	)	

**MOTION OF THE WIRELESS COMMUNICATIONS  
ASSOCIATION INTERNATIONAL, INC. FOR LEAVE TO FILE  
FURTHER REPLY COMMENTS**

The Wireless Communications Association International, Inc. ("WCA") hereby moves for leave to file further reply comments in response to the reply comments submitted on September 27, 1999 by Concerned Communities and Organizations ("CCO") with respect to the Commission's *Notice of Proposed Rulemaking and Notice of Inquiry* in WT Docket No. 99-217 (the "*NPRM*") and *Third Further Notice of Proposed Rulemaking* in CC Docket No. 96-98. Those further reply comments are attached.

At paragraph 69 of the *NPRM*, the Commission requested all interested parties to file

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comments on WCA's proposal to amend the antenna preemption rule (47 C.F.R. § 1.4000) so that all subscriber premises fixed wireless antennas up to one meter in diameter or diagonal measurement that are used to provide any type of service in any frequency band would be protected against unreasonable local restrictions.<sup>1/</sup> As set forth in the text of the proposed rule amendment provided as Exhibit A to WCA's Petition for Rulemaking submitted on May 26, 1999, this is the *only* change to the rule that WCA has requested at this time.<sup>2/</sup> Adoption of WCA's proposal thus would preserve that portion of the rule that permits municipal authorities to adopt and enforce any type of safety-related antenna restriction, provided that the restriction (1) serves a clearly defined, legitimate safety objective, (2) is nondiscriminatory and (3) is the least burdensome means of achieving the safety objective at issue.<sup>3/</sup>

Notwithstanding the fact that the *NPRM* provided all interested parties with ample notice of WCA's proposal, and that the Commission gave all interested parties a two-week extension of time within which to file initial comments on the *NPRM*,<sup>4/</sup> CCO did not submit any comments, rather

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<sup>1/</sup> Comments of The Wireless Communications Association International, Inc., WT Docket No. 99-217 and CC Docket No. 96-98, at 7-14 (filed Aug. 27, 1999) (the "WCA Comments"); Reply Comments of The Wireless Communications Association International, Inc., WT Docket No. 99-217 and CC Docket No. 96-98, at 3-10 (filed Sept. 27, 1999) (the "WCA Reply Comments").

<sup>2/</sup> See Petition of The Wireless Communications Association International, Inc. for Rulemaking Regarding Amendment of Section 1.4000 of the Commission's Rules to Preempt Restrictions on Subscriber Premises Reception or Transmission Antennas Designed to Provide Fixed Wireless Services, Exhibit A (filed May 26, 1999) (the "WCA Petition").

<sup>3/</sup> See 47 C.F.R. § 1.4000(b).

<sup>4/</sup> See *Promotion of Competitive Networks in Local Telecommunications Networks, et al.*, WT Docket No. 99-217 and CC Docket No. 96-96, DA No. 99-1563 (rel. Aug. 6, 1999) (extending

CCO raised its objections to WCA's proposal for the first time in its reply comments, affording WCA no opportunity to respond.<sup>5/</sup> CCO's filing, which is 43 pages in length (not including exhibits) and is devoted exclusively to WCA's proposal, raises a variety of factual assertions and legal arguments that by and large are based on the entirely false assumption that WCA's proposal would divest municipal governments of their right to protect public safety, and would permit unlimited rooftop installation of antennas in multi-tenant environments without property owner consent. In view of CCO's blatant mischaracterization of WCA's proposal, it is imperative that WCA be provided an opportunity to respond, both as a matter of procedural fairness and to ensure that the Commission has a full and accurate record in this proceeding. To provide all interested parties with a full and fair opportunity to review WCA's response, WCA has served its further reply comments on all parties who, to the best of WCA's knowledge, have filed formal comments and/or reply comments with respect to WCA's proposal. Accordingly, a grant of this motion should not result in any unfairness to any interested party.

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*NPRM* comment deadline from August 13 to August 27, 1999).

<sup>5/</sup> See Reply Comments of Concerned Communities and Organizations, WT Docket No. 99-217 and CC Docket No. 96-98 (filed Sept. 27, 1999) (the "CCO Reply Comments").

WHEREFORE, for the reasons set forth above, WCA requests that the Commission grant it leave to file further reply comments in response to the reply comments filed by CCO in the above-captioned proceeding.

Respectfully submitted,

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October 22, 1999

## **CERTIFICATE OF SERVICE**

I, Andrew Kreig, hereby certify that on this 22nd day of October, 1999, I caused copies of the foregoing Motion for Leave to File Further Reply Comments to be served, by first class postage prepaid U.S. Mail, on the following:

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